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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,704	03/30/2001	Shinichi Ito	39303.20243.00	7453
25224	7590	07/17/2007		
MORRISON & FOERSTER, LLP 555 WEST FIFTH STREET SUITE 3500 LOS ANGELES, CA 90013-1024			EXAMINER LEROUX, ETIENNE PIERRE	
			ART UNIT 2161	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/823,704	Applicant(s) ITO ET AL.	
	Examiner Etienne P LeRoux	Art Unit 2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-42, 44, 46, 47, 50 and 51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-42, 44, 46, 47, 50 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Claims Status

Claims 40-42, 44, 46, 47, 50 and 51 are pending. Claims 1-39, 43, 45, 48, 49 and 52-55 have been cancelled. Claims 40-42, 44, 46, 47, 50 and 51 are rejected as detailed below.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 41 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 41 includes a musical score. The specification does not describe how to select a time portion of the musical score.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40, 42, 44, 47, 50 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,502,194 (Berman et al), hereafter Berman in view of Applicant admitted prior art (AAPA).

Claims 40, 42, 44, 50 and 51:

Berman discloses:

receiving from said client terminal, first request information designating a desired single music piece [Berman: song list, col 7, lines 15-35],

on the basis of said first request information received from said client terminal, transmitting to said client terminal display information for displaying an entire time length of the desired single piece so that the entire time length of the desired single music piece can be displayed on said client terminal on the basis of the display information [Berman: song list, col 7, lines 15-35]

receiving from said client terminal second request information designating a desired time portion of the displayed music piece, said desired time portion being selected by a user of said client terminal from the displayed entire time length of the desired single music piece [Berman: selecting a track, col 7, lines 15-35, downloading the first few seconds of each track, col 8, lines 55-60]

on the basis of a complete music piece data file corresponding to said desired single music piece and in accordance with said second request information received from said client terminal, creating partial music piece data file corresponding to the desired time portion designated by said second request information [Berman: Fig 3, step 314, col 7, lines 25-35]

transmitting the created partial music piece data file to the client terminal [Berman: Fig 3, step 314, col 7, lines 25-35]

Berman discloses the elements of the claimed invention as noted above but does not disclose on the basis of said second request information determining a selling price of the created partial music piece data file wherein the selling price of the created partial music piece data file being less than a selling price of the complete music data file and wherein the selling price of the created music piece data is dependent upon one of a length and a location of said desired time portions. Applicant as admitted prior art discloses a billing process server 103, Fig 23, paragraph 8]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Berman to include on the basis of said second request information determining a selling price of the created partial music piece data file wherein the selling price of the created partial music piece data file being less than a selling price of the complete music data file and wherein the selling price of the created music piece data is dependent upon one of a length and a location of said desired time portions based on the teachings of AAPA for the purpose of providing a commercial website which sells music piece(s) to one or more clients.

Claim 47:

The combination of Berman and AAPA discloses the elements of the claimed invention as noted above but does not disclose wherein the predetermined billing-related information is at least one of a credit card number, an address to which an application form for remittance is to be sent, and user information for use of electronic money. Official Notice is taken that a credit card is a well-known and expected means for making payment for goods and/or services.

Claims 41 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Berman and AAPA as applied to claims 40 and 44 and further in view of US Pat No 6,096,962 (Crowley), hereafter Crowley.

Claim 41, 46:

The combination of Berman and AAPA discloses the elements of the claimed invention as noted above but does not disclose wherein the display information to be transmitted to said client terminal is information for displaying the desired music piece as a musical score. Crowley discloses a partial musical file as a score [Fig 2A, abstract, Claim 1]. It would have been obvious to one of ordinary skill in the art at the time the invention to modify the above combination of references to include wherein the display information to be transmitted to said client terminal is information for displaying the desired music piece as a musical score based on the teachings of Crowley for the purpose of constantly evolving a game's musical score [Crowley, abstract].

Response to Arguments

Applicant's arguments submitted 3/23/2007 have been carefully considered but are moot based on above new grounds of rejection.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached Monday through Friday between 8:00 am and 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Apu Mofiz can be reached on (571) 272-4080. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Etienne LeRoux

7/3/2007



ETIENNE LEROUX
PRIMARY EXAMINER